BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RASIB SIRHINDI	)	
Claimant	)	
	)	
VS.	)	
	)	
SPRINT CORPORATION	)	
Respondent	)	Docket No. 1,017,580
	)	
AND	)	
	)	
GALLAGHER BASSETT INS. CO.	)	
Insurance Carrier	)	

ORDER

Respondent requests review of the January 26, 2006 preliminary hearing Order entered by Administrative Law Judge (ALJ) Steven J. Howard.

ISSUES

The ALJ granted claimant's request for additional treatment to his left shoulder and neck. Although his Order does not expressly state, it is implicit in this Order that he concluded claimant had met his burden of proving he sustained an accidental injury arising out of and in the course of his employment with respondent.

Respondent appealed the Order alleging the ALJ exceeded his jurisdiction in granting claimant's request for treatment. Respondent argues that claimant did not suffer an accidental injury, nor did his injury arise out of and in the course of his employment. Respondent also contends the ALJ deprived it of the opportunity to present evidence that would constitute a "certain defense" which would defeat claimant's claim.

Claimant asserts the ALJ's Order should be affirmed. Claimant believes the evidence offered at the preliminary hearing establishes he sustained an injury to his left upper extremity and neck while working for respondent on February 24, 2004. And the documents offered by respondent after the close of evidence were properly not considered.

The issues presented by the parties in this appeal are as follows:

1. Did claimant sustain an accident on February 24, 2004;

2. Did claimant's alleged injury arise out of and in the course of his employment; and

3. Did the ALJ deny respondent an opportunity to present evidence or exceed his jurisdiction in not considering the documents offered by respondent after the close of evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant was employed as a computer analyst and was asked to inventory and remove a collection of servers, on February 24, 2004, some of which weighed as much as 80 pounds. As he was lifting one of these servers claimant testified he felt a "click" in his neck. He continued to work but he eventually reported his problem to his supervisor and he was referred to an occupational health clinic.[1] He also sought out assistance from a chiropractor. After a short period of physical therapy claimant was released to return to work by both the chiropractor and the occupational facility.

Although respondent denies claimant's injury and its connection to work, claimant's recitation of the event is generally consistent with the testimony of his co-worker Robert Hill and supervisor, Linda Ensign.

Claimant apparently returned to work and continued his normal duties, but in May 2004 he requested time off for a family matter. And on May 27, 2004 claimant sought an evaluation with Dr. Robert L. Garrison. Claimant noted his injury "two months ago" while lifting a computer and complained of a stiff neck and pain down the left arm. Dr. Garrison requested to see claimant's previous EMG/nerve conduction study and order a MRI of the cervical spine. On June 16, 2004, following completion and review of those tests, claimant was seen by another physician in that same group, Dr. Robert J. Takacs. Dr. Takacs diagnosed a herniated disc, left C5-6 and left C6-7. He recommended an anterior cervical discectomy and fusion. Epidural injections were suggested as an alternative to surgery, but claimant is uncomfortable with needles and that prospect was not acceptable.

Claimant also returned to the occupational facility and complained of numbness and a loss of grip strength on the left side. The medical provider concluded these complaints

[1] Notice is not disputed.

were "new" and because claimant had been released earlier, his complaints were not considered work-related.

In July 2004, claimant voluntarily left respondent's employ and moved to Canada. Claimant testified at the preliminary hearing that he has not received treatment since he last saw Dr. Takacs. He is not requesting the treatment outlined by Dr. Takacs. Rather, he requested treatment with a physician in Canada, where he now resides.

At the preliminary hearing, the parties agreed that claimant would testify via deposition and that respondent would depose its witnesses as well. The matter would then be submitted to the ALJ for consideration. The ALJ specifically directed the attorneys to "notify me by correspondence regarding what the record is and when it's submitted, correct?"[2] Both parties agreed to do so.

Then, on December 22, 2005, the parties presented a Joint Order for Extension of Time. This Order, signed by the ALJ, extended the period for producing evidence to Friday, January 13, 2006. No further extensions were requested or ordered.

According to respondent's counsel, on January 13, 2006, he received a number of medical records from Dr. Richard Chen in Canada. These records show that claimant was in fact, receiving treatment in Canada contrary to his testimony. Respondent's counsel wrote to claimant's counsel on January 16, 2006 and demanded claimant withdraw his request for treatment or allow respondent to offer these records into evidence. That letter went unacknowledged and, on January 19, 2006, respondent sent those records to the ALJ and offered them into evidence. Claimant objected to this offer.

The ALJ issued his order on January 26, 2006 and granted claimant's request for treatment to his left shoulder and neck. This order makes no mention of the records respondent attempted to offer so it is unclear whether they were considered. But based upon the ALJ's conclusion to award treatment, he implicitly found that claimant sustained his burden of establishing an accidental injury arising out of and in the course of his employment with respondent.

The Board has considered the record as a whole and finds the ALJ's preliminary hearing Order should be affirmed. Claimant's testimony as to his accident is uncontroverted and essentially corroborated by the two other witnesses who testified on respondent's behalf. Accordingly, the Board finds no reason to disturb the ALJ's conclusion as to the underlying compensability of claimant's claim.

As for the argument surrounding the medical records which respondent attempted to enter into evidence on January 19, 2006, this is an evidentiary issue and is therefore not

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[2] P.H. Trans. at 5.

the proper subject for an appeal from a preliminary hearing.[3] Although respondent has attempted to clothe this argument as one involving a "certain defense", suggesting that by refusing to admit these documents the ALJ deprived respondent of an opportunity to offer evidence that will discredit claimant's claim, all in the hopes of vesting the Board with jurisdiction, the Board is unpersuaded. Nor is the Board persuaded that the ALJ somehow exceeded his jurisdiction on this issue. What respondent articulates is an evidentiary issue which is in sole province of the ALJ and whether the evidence was or was not properly and timely offered or considered is not an issue for the Board's consideration at this juncture.

As provided by the Workers Compensation Act, preliminary hearing findings are not final, but subject to modification upon a full hearing on the claim.[4]

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Steven J. Howard dated January 26, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April 2006.

_____
BOARD MEMBER

c: Dennis L. Horner, Attorney for Claimant
Daniel N. Allmayer, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[3] *Escalera v. Asplundh Tree Expert Co.*, No. 1,022,821, 2005 WL 2519636 (WCAB Sept. 30, 2005).

[4] K.S.A. 44-534a(a)(2).